# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 20619 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**HIMATBHAI D PARMAR C/O ASSOCIATION OF RAILWAY AND - Petitioner(s)**

**Versus**

**DESK OFFICER & 1 - Respondent(s)**

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**Appearance :**

MR PH PATHAK for Petitioner(s) : 1,
MR JITENDRA MALKAN for Respondent(s) : 1,
MR KETAN A DAVE for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 25/10/2005**

**ORAL JUDGMENT**

1. In the present petition, the petitioner has challenged the legality of an order dated 20th June, 2003 passed by the Ministry of Labour, Govt. of India, New Delhi. By the impugned order the request of the petitioner to refer disputes regarding his termination came to be turned down on the following reasons:

"It is reported that the union/workmen failed to prove that he worked for 240 days continuously during the preceeding 12 months from the date of termination."

2. It is the case of the petitioner that he had worked with respondent no.2 as a sweeper from 1992 till he was illegally terminated on 15/10/2001 which termination was without following any procedure prescribed under the law and in particular under the provisions of Industrial Disputes Act. The petitioner, therefore, approached the Conciliation Officer who submitted his failure report dated 5/2/2003. The petitioner did not receive any reply from the respondents. He, therefore, sent reminders. Eventually along with the letter dated 22/9/2004 he was conveyed the impugned order refusing to refer his dispute for adjudication.

3. It is by now well settled that when the Industrial Dispute exits or is apprehended, the appropriate Government while considering the question whether reference should be made or not, cannot dwell into the merits of the dispute and decide the lis itself. (see **AIR 1989 SC 1565**) In addition to the ground that the

termination was in violation of the provisions of Section 25-F of the Industrial Disputes Act, the petitioner has also been urging that such termination is opposed to the provisions of Section 25 G and H of the Industrial Disputes Act. It was, therefore, not open for the Government to refuse to refer for adjudication on the ground noted herein above.

4. In view of the above discussion, impugned order is required to be and is hereby quashed. The respondent no.1 is directed to reconsider the question of referring the Industrial Dispute of the petitioner for adjudication to the appropriate Labour Court/Industrial Tribunal. Such decision shall be taken bearing in mind the observations made herein above within a period of two months from the date of receipt of a copy of this order. With these directions, the petition is allowed. Rule is made absolute. No order as to costs.

5. Direct Service for Respondent No.1 permitted.

(Akil Kureshi, J.)

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